

APPEAL NO. 991907

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 28, 1999. He (hearing officer) determined that the respondent (claimant) sustained a right shoulder injury on _____, and had disability from February 13, 1999, through March 2, 1999. The appellant (carrier) appeals these determinations, contending that they are contrary to the great weight and preponderance of the evidence. The appeals file contains no response from the claimant.

DECISION

Affirmed.

The claimant worked as a telemarketer. Her work involved use of a telephone with headset and microphone, a keyboard, and a computer. She testified that on _____, she was having problems with the headset so she laid it on her right shoulder. At some point thereafter, she said, she felt a "sharp pain like someone had stabbed me in the shoulder." She further said that the headset was not attached to the computer, but to a "box" and that the headset was not resting directly on her skin. She also testified that when she felt the pain, she immediately screamed and became disoriented. That evening she went to an emergency room (ER) complaining of sharp pains in the shoulder and neck and a tingling sensation in both hands. While at the ER, the claimant said, the attending doctor noticed a burn mark on her shoulder and told her it was an electrical burn about two inches in diameter. She then sought medical care from Dr. J, who in an Initial Medical Report (TWCC-61) diagnosed joint pain which he attributed to an electrical shock. Apparently the claimant described to the doctors an electrical shock from the headset as the source of her pain and muscle spasms. A medical document included with the one-page ER report and presumably part of the ER records, not Dr. J records, refers inexplicably to a shock and mild burn on December 3, 1998. On cross-examination, she admitted that she did not know what shock felt like, but attributed the symptoms to electrical shock. The claimant testified that she was placed in an off-work status and returned to her regular duties on March 2, 1999.

Mr. S, the senior network services technician for the employer, testified that he maintained and repaired the equipment and had special training in electrical problems. He said he checked the claimant's workstation after the incident and found nothing that would cause a shock or burns. According to Mr. S, the headset was powered by a 24-volt direct current power source unconnected to the computer or its power source. In his opinion, the lines supplying the power could not cross and there was no way to plug the headset into the computer. At most, he believed, the power supply for the headphones would feel like a "little bite on the tongue" but was not strong enough to burn the skin. His credentials for reaching this conclusion were not disclosed.

The claimant had the burden of proving that she sustained a compensable injury in the manner claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did is a question of fact for the hearing officer to decide. In this case, she contends that she suffered an electrical shock injury. Unlike the typical electrical shock case where the injury results from the reaction to the shock, like a sudden jerking or twisting motion or fall (see, e.g., Texas Workers' Compensation Commission Appeal No. 982394, decided November 24, 1998 (Unpublished); Texas Workers' Compensation Commission Appeal No. 972389, decided December 29, 1997 (Unpublished); and Texas Workers' Compensation Commission Appeal No. 961859, decided November 6, 1996 (Unpublished)), or where there is evidence of obvious contact with a strong electrical current (see e.g., Texas Workers' Compensation Commission Appeal No. 970851, decided July 2, 1997, and Texas Workers' Compensation Commission Appeal No. 951720, decided November 27, 1995), in this case it is asserted that an electrical shock of relatively low voltage from a nonobvious source directly caused the injury. The hearing officer found that the claimant "sustained an electric shock to her right shoulder that resulted in muscle spasm and pain in the right shoulder and neck" (Finding of Fact No. 9) and concluded that this constituted a compensable injury. Conclusion of Law No. 2.

The carrier appeals this determination, arguing that the evidence established that it was impossible to sustain a shock from the headset as claimed. In doing so, it relies primarily on Mr. S's testimony and the claimant's own statement that she was not aware of what a shock was at the time of the incident. The hearing officer was the sole judge of the weight and credibility of the evidence. Section 410.165(a). In Texas Workers' Compensation Commission Appeal No. 94550, decided June 16, 1994 (Unpublished), the claimant contended that she sustained a compensable electrical shock injury from pushing a button on an elevator. In that case, the claimant said she saw yellow sparks coming out of the control panel and felt light-headed with headaches as a result. The carrier produced evidence of no problems with the elevator and that the pigmentation of the finger was not consistent with electrical shock. Nonetheless, the Appeals Panel affirmed the decision of the hearing officer that the claimant did sustain a compensable electrical shock injury based on her testimony. In the case we consider, the evidence was arguably weaker than in Appeal No. 94550. Nonetheless, we are unwilling to hold as a matter of law that a claimant's testimony alone cannot establish an electrical shock injury. Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. While clearly the claimant had the burden of proof, we note that the carrier did not present medical evidence contrary to the claimant's theory of causation, but only attempted to discount the likelihood of shock as "impossible" by virtue of the nature of equipment being used. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). While another hearing officer may well have found otherwise, this hearing officer found the claimant credible and persuasive in testimony that she sustained an electrical shock injury. Under our standard of review, we find this evidence sufficient to support this determination.

The carrier also appeals the disability finding, contending that the claimant's testimony about her inability to work until released on March 2, 1999, was "incredible" in light of the, at best, "minute" nature of the shock, which it still insists never occurred in the first place. Whether disability exists is also a question of fact which can be proved by the claimant's testimony alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer found the claimant credible on this issue. That largely ends the matter, but we do note that her testimony was supported by an off-work slip issued by Dr. J on February 17, 1999, the date of the initial visit. The only evidence ending disability on March 2, 1999, was the claimant's testimony. Under our standard of review, we find the evidence sufficient to support the disability determination.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge